

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:12-cv-838

* * *

TEMAKO McCARTHY & VICTOR)	
WILLIAMS,)	
)	
Co-Administrator of the)	
Estate of La-Reko Williams,)	
)	
Plaintiffs,)	
)	VIDEO CONFERENCE
v.)	DEPOSITION OF:
)	
TASER INTERNATIONAL, INC.,)	KENNETH WALLENTINE
)	
CITY OF CHARLOTTE,)	
)	
OFFICER MICHAEL FORBES,)	
in his individual capacity)	
and official capacity, &)	
)	
CHIEF RODNEY MONROE,)	
in his individual capacity)	
and official capacity as)	
Chief of Charlotte-Mecklenburg)	
Police Department,)	
)	
Defendants.)	

* * *

April 2, 2014
10:06 a.m.

* * *

* * *

DEPOMAXMERIT LITIGATION SERVICES
333 South Rio Grande
Salt Lake City, Utah

* * *

Dana Marie Kennedy
- Certified Shorthand Reporter -
Registered Professional Reporter

APPEARANCES:

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ALSO PRESENT: LANCE HARRISON, CLVS

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1 SALT LAKE CITY, UTAH, WEDNESDAY, APRIL 2, 2014

2 P R O C E E D I N G S

3 THE VIDEOGRAPHER: Okay. We're on record.
4 My name is Lance Harrison. I'm the videographer. The
5 court reporter is Dana Kennedy. We represent
6 DepomaxMerit located in Salt Lake City, Utah. The time
7 of day indicated on the video screen is 10:06 a.m.
8 mountain standard time, April 2nd, year 2014.

9 This is the case of Temako McCarthy and
10 Victor Williams versus Taser International, Inc., City
11 of Charlotte, Officer Michael Forbes, and
12 Chief Rodney Monroe. Civil Action No. 3:12-cv-838 in
13 the United States District Court for the Western
14 District of North Carolina, Charlotte Division.

15 Counsel will now introduce themselves, and
16 the court reporter will swear in the witness.

17 MR. EVERAGE: Attorney Charles Ali Everage
18 representing the plaintiffs.

19 MS. KEETON: Lori Keeton. I represent
20 Austin Michael Forbes.

21 MR. FULTON: Harcourt Fulton for the City of
22 Charlotte.

23 **KENNETH R. WALLENTINE,**
24 having been duly sworn was examined and testified
25 as follows:

1 EXAMINATION

2 BY MR. EVERAGE:

3 Q. I would like to -- I'd like to introduce an
4 exhibit that I'll refer to as -- it's a 28-page exhibit.
5 It's labeled "Report of Kenneth R. Wallentine." Do you
6 have that report in front of you, Mr. Wallentine?

7 A. Yes, I do.

8 Q. Is that a report that you generated?

9 A. Well, give me a second to look at it. This
10 appears to be a copy of a report that I wrote.

11 MR. EVERAGE: I move to mark this as
12 Plaintiffs' Exhibit No. 1.

13 (Whereupon Exhibit No. 1
14 marked for identification.)

15 BY MR. EVERAGE:

16 Q. Mr. Wallentine, does this report include all of
17 the opinions that you are prepared to testify or offer
18 in this litigation?

19 A. It does to date, yes, sir.

20 Q. And it is divided into four sections, A, B, C
21 and D. Are there any additional opinions that are not
22 included in this report in those four sections?

23 A. Well, I haven't looked at the sections so I'll
24 take your representation it's divided into four
25 sections, but the report contains everything that I'm

1 prepared to testify about thus far in this case.

2 Q. Looking at pages one and two of this report, you
3 list documents, pleadings, records and reports that you
4 reviewed preparing this report; is that correct?

5 A. That is correct.

6 Q. Are there any additional documents, reports or
7 depositions that you reviewed in formulating your
8 opinion?

9 A. I don't believe so.

10 Q. Looking at page two, there are a number of
11 transcripts listed. For example, transcript of Destiny
12 -- transcript of Destiny Franklin. Are you referencing
13 the interview about the Shaw Police Department report of
14 Destiny Franklin?

15 A. I believe so. I haven't looked at that
16 transcript for over four months, but I believe that that
17 was an interview with the Police Department.

18 Q. Were you ever provided a copy of a deposition
19 transcript of Destiny Franklin?

20 A. I don't believe so.

21 Q. Okay. Were you ever provided a deposition
22 transcript of Omari Greene?

23 A. I'm sorry. Of who?

24 Q. Omari Greene.

25 A. No. I don't believe so.

1

2 Q. Were you ever provided any deposition transcripts
3 other than Officer Michael Forbes?

4 A. I believe that Officer Forbes' deposition is the
5 only deposition transcript that I've seen in this case.

6 Q. Okay. And who provided those documents to you?

7 A. That would have -- they would have come to me
8 through Ms. Keeton's office.

9 Q. Starting with Section A of this -- of your
10 report, you state that Officer Forbes, uh, gave commands
11 and detained, Officer Forbes' commands the detention of
12 La-Reko Williams; is that correct?

13 A. Are you reading on page six?

14 Q. Yes, sir.

15 A. Yes. That does say that on page six.

16 Q. Do you agree that a detention occurs any time an
17 officer stops or questions a suspect?

18 A. As -- if you're asking my opinion on that as a
19 matter of law as an attorney and judge, I would say no,
20 I do not agree.

21 Q. Then in this case did Forbes detain
22 La-Reko Williams when he stopped to question him?

23 A. I'm not sure what you mean by "when he stopped to
24 question him," if that's what you said.

25 Q. Okay. Can you answer the question?

1 A. No.

2 Q. If a detention is unlawful, can a suspect resist
3 an unlawful detention with force?

4 A. Well, I am aware of some decisions by various
5 State Supreme Courts in some states that have in
6 minority opinions expressed that view. If you're asking
7 my opinion as an attorney or as a judge, I would
8 probably give you a different opinion.

9 Q. If a person is detained and questioned or asked
10 what happened, does the subject have a constitutional
11 right under the Fifth Amendment which protects against
12 self-incrimination to say nothing to the officer?

13 A. I don't believe that's consistent with the
14 majority position of decisions of the United States
15 Supreme Court, but I didn't come here prepared today to
16 present one of my courses on criminal procedure.

17 Q. Okay. If a subject is asked by an officer I need
18 to hear your side of the story, is the subject within
19 his rights constitutionally to say no?

20 A. I certainly think that that is an option that --
21 I'm trying to think. I think it's Professor Akhil Amar
22 of Harvard has expressed an opinion on that very topic,
23 and I think that's certainly within the realm of
24 possibilities.

25 Q. Okay. And is it within a subject's right to say

1 to an officer who asked to hear his side of the story, I
2 don't have to talk to you?

3 A. Again, I'd give you the same answer.

4 Q. In your review of the facts, do you agree that
5 when Forbes approached La-Reko Williams,
6 La-Reko Williams was walking in a direction away from
7 the scene?

8 A. I believe that La-Reko Williams was walking away
9 from the officer. I'm not sure what you mean by "the
10 scene," sir.

11 Q. Well, you agree that he was walking away from the
12 scene -- away from the officer initially?

13 A. Yes, sir.

14 Q. Do you agree at some point La-Reko Williams
15 stopped walking?

16 A. Yes.

17 Q. Do you agree that at no time did a witness or Mr.
18 Forbes observe La-Reko Williams running away from the
19 officer?

20 A. I -- well, that -- the question's awfully broad,
21 but based on what I've seen thus far in this case, I
22 agree with your statement.

23 Q. And all of the documents you reviewed in this
24 file was a transcript or either a recording of a
25 conversation between La-Reko Williams and Forbes; is

1 that correct?

2 A. I reviewed an audio recording with voices that I
3 believe that those two persons were represented on that
4 recording.

5 Q. And in Mr. Forbes's testimony, to your knowledge,
6 he doesn't indicate during this conversation that
7 La-Reko Williams was trying to flee or was walking away
8 while this conversation was ongoing?

9 A. I don't believe there's a statement to
10 that effect.

11 Q. Have you heard that?

12 A. I don't believe that there's a statement to that
13 effect on the recording that I heard, but I don't recall
14 the recording with any great specificity this morning.

15 Q. Okay. Do you recall in your review of the case
16 whether the Officer Forbes gave a second command to
17 La-Reko Williams to provide identification?

18 A. To provide identification?

19 Q. Yes.

20 A. I believe so. I don't recall how many commands
21 there were to identify himself.

22 Q. Okay. Do you know whether the command was to
23 identify himself or to produce ID?

24 A. I don't recall, sir.

25 Q. Do you know if Williams's belongings, which were

1 provided to the police after his death, included an ID
2 card or license?

3 A. I -- I don't. I remember reviewing the autopsy
4 report, sir, but I don't remember what inventory or
5 property was there.

6 Q. Would the fact that La-Reko Williams responded
7 that he didn't have ID be an aggressive action?

8 A. Not in and of itself, no.

9 Q. Would the fact that he responded that he didn't
10 have ID, would that be an act of resistance or
11 noncooperation?

12 A. Well, do you want to break that question up?

13 Q. Okay. If -- if La-Reko Williams was asked for
14 identification, an ID card, and he responded I don't
15 have ID, would that be an act of resistance?

16 A. Not in and of itself, no.

17 Q. Would you admit that La-Reko Williams was asked
18 for identification and he responded that he didn't have
19 it, would that be an act of noncooperation?

20 A. Well, taking your hypothetical simply as
21 presented, I would say no. I mean, that -- in and of
22 itself, no.

23 Q. Isn't it true that Officer Forbes never asked
24 La-Reko Williams his name?

25 A. I don't recall whether that question was asked or

1 not.

2 Q. There isn't a law in North Carolina that you know
3 of that requires a person who isn't driving to carry any
4 type of identification, is there?

5 A. I'm not familiar with such a statute or ordinance
6 if it exists.

7 Q. Does a -- in North Carolina, does a subject have
8 a right to ask why he's being arrested or detained?

9 A. I know of no juris prudence that would hold
10 otherwise in North Carolina.

11 Q. So is that yes or you don't know? I didn't
12 understand your answer.

13 A. I'm not aware of any juris prudence in
14 North Carolina that would prohibit a person from asking
15 such a question.

16 Q. Are you aware of whether there's a statute in
17 North Carolina that requires an officer statutorily to
18 inform a person why he is being detained or arrested?

19 A. I am not.

20 Q. And you stated earlier that you're an attorney,
21 correct?

22 A. Yes, sir.

23 Q. Okay. But you're not licensed in North Carolina?

24 A. I am not.

25 Q. Okay. Have you ever been admitted to practice on

1 a pro hac vice basis in North Carolina?

2 A. I have not.

3 Q. And are you licensed to practice in Utah?

4 A. Yes.

5 Q. In Section V of your report, I want to read a
6 sentence that says -- and this is on page eight (as
7 read): "The risk of injury posed on application of the
8 Taser X26 device was minimal and was reasonable -- was
9 minimal."

10 I'll just read part of that sentence. What do
11 you base that opinion on?

12 A. I base that opinion on my own experience with
13 Electronic Control Devices generally, my own experience
14 with the Taser X26 Electronic Control Device, my
15 training as an instructor for Electronic Control
16 Devices, and specifically for instructing in the use of
17 the Taser X26 Electronic Control Device, as well as my
18 training and education in the world of Electronic
19 Control Devices, my review of literature, participation
20 in various seminars, empirical observations, and
21 learning from other sources.

22 Q. Okay. And have you conducted any scientific
23 studies on the effects of Taser applications to the
24 heart?

25 A. I have not.

1 Q. Okay. Have you looked at any studies of whether
2 Taser applications can affect the rhythm of the heart
3 and cause death?

4 A. I have.

5 Q. Okay. Which studies have you examined?

6 A. I can't recall. I didn't bring any files, don't
7 have my research file here with me. I can tell you that
8 I have reviewed numerous studies by a number of folks in
9 the medical field that generally address the topic that
10 you raise.

11 Q. Okay. How recent are the studies that you
12 reviewed?

13 A. Uh, the most recent would have been probably 48
14 hours ago.

15 Q. It was not how recently you read it, but what
16 would be the publication?

17 A. Forty-eight hours ago.

18 Q. What are you referencing 48 hours ago?

19 A. There's a new study published by a Dr. Mark Kroll
20 that he sent me a copy of it. I am assuming that the
21 publication is -- was contemporaneous with him sending a
22 copy to me.

23 Q. Okay. Do you know the title of that article?

24 A. I -- I don't. I didn't bring it with me.

25 Q. Okay. Are you familiar with any studies

1 conducted by Dr. Zipes?

2 A. I have heard Dr. Zipes speak about a case review.

3 Q. Okay. Have you read any of his published
4 studies?

5 A. I'm not aware that he's published any studies. I
6 have read publications concerning a case review.

7 Q. Do you contend that in Section C that the
8 Charlotte-Mecklenburg Police Department properly trained
9 Officer Forbes on the use of force in the use of this
10 Electronic Control Device; is that true?

11 A. Strikes me as something that I wrote. Can you
12 tell me where you're reading from, sir?

13 Q. Page 15.

14 A. Thank you. Yes. It does say that on page 15.

15 Q. And do you agree that in making that statement
16 you consider the fact that the Charlotte Police
17 Department used and implemented training and warnings
18 provided by Taser International?

19 A. It's my understanding that the foundation, or at
20 least a significant portion of the training provided
21 by the Charlotte-Mecklenburg Police Department, did,
22 in fact, follow material, and I believe, sir, did,
23 in fact, use material provided by Taser International.

24 Q. Okay. And do you agree that the -- that Taser
25 safety warnings are important for officers to know and

1 understand?

2 A. I believe that the Taser safety warnings should
3 be presented in training.

4 Q. Okay. Do you believe that they should be
5 presented in whole and completely?

6 A. I'm sorry. There was something that interrupted
7 your question, an electronic ding. Can you repeat your
8 question, sir?

9 Q. Do you believe that the city when presenting
10 safety warnings for Taser should be -- should do so in a
11 complete and thorough manner?

12 THE REPORTER: In a complete and thorough
13 manner.

14 THE WITNESS: Oh, I'm sorry. I had
15 difficulty understanding you. In a complete and
16 thorough manner, uh, yes.

17 (Whereupon Exhibit No. 2
18 marked for identification.)

19 BY MR. EVERAGE:

20 Q. The court reporter or videographer should have a
21 document I've marked as Plaintiffs' Exhibit 2 which is a
22 Law Enforcement Report of IECD Product Safety and Health
23 Information Warning dated May 31st, 2011. Have you ever
24 seen this document previously, Mr. Wallentine?

25 A. I have.

1 Q. Do you agree that it would be expected or
2 reasonable for a Police Department, such as the
3 City of Charlotte, to make sure that their officers
4 receive the training and warnings that are contained in
5 this exhibit?

6 A. The material contained in the exhibit should, in
7 fact, be generally discussed in end user training for an
8 Electronic Control Device.

9 Q. I would like to mark this as Exhibit 2.

10 A. And it has been already, sir. I've got a copy in
11 front of me that is marked as deposition Exhibit 2.

12 Q. Looking at page four of the exhibit, is there a
13 -- do you agree that there should be a warning given to
14 officers to minimize repeated exposures to ECD
15 deployments?

16 A. Yes. That is part of the prescribed warning and
17 should be part of training discussion.

18 Q. Do you agree that ECD users should use the lowest
19 number of EDC [sic] exposures to a subject?

20 A. I believe that the least amount of Electronic
21 Control Device exposure should be used to achieve the
22 objective, yes.

23 Q. And do you also agree that after each application
24 or use of a Taser, the user, in this case the officer,
25 should reassess the subject's behaviors, reactions, and

1 resistance level before reinitiating a Taser deployment?

2 A. Yes.

3 Q. Do you agree that if the subject is noncompliant
4 after a number of ECD exposures consideration by the
5 officer should be given to consider an alternative use
6 of force?

7 A. Yeah. Yes, I do.

8 Q. Do you agree that the officer is only authorized
9 to use an additional application of the Taser if there
10 is an imminent threat?

11 A. Well, that's -- that's a fairly complex question,
12 but if you're asking with respect to the broad, general
13 answer, I'd have to say no.

14 Q. So your opinion is that a Taser can be used if
15 the subject does not present an imminent threat?

16 A. Well, you asked an exceedingly broad question,
17 and I gave you an exceedingly broad answer. You're
18 asking the same question again so I'm going to give you
19 the same broad answer.

20 Insofar as you're asking an overarching umbrella
21 question asking for an overarching umbrella answer, the
22 answer is yes.

23 Q. Do you know whether the City of Charlotte's
24 policy allows officers to use Tasers if there is not an
25 imminent threat?

1 A. Generally, the use of an Electronic Control
2 Device without some form of threat -- you've not defined
3 that at all -- without some form of threat would be
4 contraindicated.

5 Q. What do you mean when you say I haven't defined
6 it? Is imminent threat, is that a sufficient term of
7 definition?

8 A. Well, it's certainly subject -- a term that is
9 subject to various gradients and also calls I think --
10 asks for the question of imminency as perceived at what
11 point, in the 20/20 hindsight of the comfort of a
12 deposition room?

13 Q. Do you believe that a policy that uses only the
14 terminology "imminent threat" is insufficient in
15 informing the officer of when Tasers should be used?

16 A. If that's the only term in the abstract, then
17 yes.

18 Q. Do you agree, and I think the warning says this
19 on the same page, page four, that a Drive-Stun Mode is
20 usually only for pain compliance only?

21 A. I agree that the touch mode of an Electronic
22 Control Device generally, although not exclusively and
23 not consistently, achieves distraction or pain
24 compliance only and does not generally, although it does
25 in some circumstances, cause neuromuscular

1 incapacitation.

2 Q. Do you agree that this warning produced by Taser
3 warns against striking sensitive body parts as being
4 hazardous? As being a hazard? Excuse me.

5 THE WITNESS: As being?

6 THE REPORTER: As being a hazard.

7 THE WITNESS: Oh, okay. I haven't reviewed
8 the warning recently, but I am familiar that
9 Taser International in its training material does,
10 in fact, caution against intentional targeting of
11 sensitive body parts.

12 BY MR. EVERAGE:

13 Q. Do you agree that this Taser training or this
14 Taser warning states that the preferred target area for
15 a frontal shot is the lower center mass below the chest,
16 below chest?

17 A. The -- again, I haven't reviewed this, but I can
18 tell you just based on my understanding of the training
19 material and Taser's warnings generally is that if there
20 is a -- the necessity for a frontal shot that the lower
21 center of mass, I think you said the lower chest area,
22 is preferred over a higher targeting area.

23 Q. Well, why don't you just take a second and look
24 at it. It's right at the center of page four, and I
25 want to make sure that I'm saying it right and that

1 you're saying it right, and just read the sentence that
2 refers to the preferred target areas?

3 A. Sure. Yeah. I see a section marked "sensitive
4 body part hazard" which does, in fact, state, which I
5 think is what I just said, that the preferred -- among
6 the preferred target areas is the lower center mass
7 below the chest for frontal shots, and that is
8 consistent with my understanding.

9 Q. And do you agree that this warning further states
10 in the next sentence (as read): "The preferred target
11 areas increase dart-to-heart safety margin distance"?

12 A. That is correct.

13 Q. And what is your understanding of the
14 dart-to-heart safety margin distance?

15 A. Well, that distance refers to the -- the
16 proximity to the heart muscle of the tip of the Taser
17 probe through which the electronic current is delivered,
18 and there is some discussion in the scientific community
19 about concerns for cardiac injury with a very short
20 dart-to-heart distance.

21 Q. And, in fact, the warning further states in a
22 footnote (as read): "Proximity of the ECD, electronic
23 electrical discharge to, or across, the heart has been
24 identified as a principal concern for ECD caused cardiac
25 risks and safety."

1 Do you agree that that warning is clear and in
2 the warning provided by Taser?

3 A. It is.

4 Q. And do you agree that that warning should be
5 communicated by reasonable Police Department to its
6 officers?

7 A. I believe that the Police Department should
8 present these warnings in the context of the training
9 for the end user prior to certification for use of the
10 Taser device.

11 Q. Do you agree that a department explaining the
12 effect -- the possible effect on the heart of a Taser
13 application is reasonable? Let me strike that. Let me
14 restart that.

15 Do you believe that a department should educate
16 and explain to its officers the possible effect of a
17 Taser application on a subject's heart?

18 A. I think that the department should provide
19 warnings and should provide training on the preferred
20 targeting areas.

21 Q. Do you think that if a off- -- that if a
22 department advised the police officers that it was
23 training of the preferred area but did not advise the
24 police officers of the cardiac -- cardiac risks and that
25 potential danger that they did an inadequate job in

1 training?

2 A. Well, I -- I don't know that you'd have -- you
3 could have a discussion of preferred targeting areas
4 talking about avoiding the heart and not have some
5 discussion of the risk.

6 So, if that were the case, if your hypothetical
7 were true to the case, then it would be a little bit
8 like telling someone don't do this and not giving the
9 explanation as to why they shouldn't.

10 And I suppose that it's adequate to tell someone
11 they shouldn't do it without explaining, but the
12 preferred approach would be to provide training on the
13 warning.

14 Q. Okay. And I just wanted to go over some things
15 and make sure that they're not in your report or ask you
16 if they were. Does your report or opinion address
17 whether -- whether it was appropriate for an officer to
18 use a Taser in Drive-Stun Mode against La-Reko Williams?

19 A. My report does not talk about touch mode
20 application, no.

21 Q. Your report and opinion, does it not address
22 whether it was appropriate for an officer to cut off his
23 recording device in the middle of an incident in which
24 the officer is using force?

25 A. I do not discuss an officer cutting off a

1 recording device, no.

2 Q. Did you review any documents related to the death
3 of Darryl Turner after he was tased by a
4 Charlotte-Mecklenburg Police Department officer prior
5 to La-Reko Williams? Completely separate event.

6 A. I have.

7 Q. Okay. What documents did you review?

8 A. I don't recall. That review was not in
9 conjunction with preparing a report or evaluating
10 documents sent to me in this -- to review in this
11 particular case.

12 Q. Was it in relation to another case, or was it
13 just something you did independently?

14 A. It was not in connection with a case. I made a
15 presentation quite sometime ago and in the course of
16 researching that presentation came across a report, and
17 I'd forgotten the name Darryl, but I'm confident the
18 last name was Turner. So I reviewed some material, but
19 it had nothing to do with this case.

20 Q. Okay. And you said that you were making a
21 presentation?

22 A. That's correct.

23 Q. And you researched it? Do you recall where you
24 were presenting in your topic?

25 A. I believe that it was -- I believe that it was in

1 Chicago, Illinois, and I was chairing a panel discussion
2 of contemporary topics and use of force. That's not the
3 precise title for the panel. I don't recall the exact
4 title.

5 Q. Do you recall the organization at which -- or
6 conference at which the presentation was given?

7 A. I do.

8 Q. What -- can you identify that?

9 A. That was the conference of the International
10 Association of Chiefs of Police.

11 Q. And do you recall the year?

12 A. I -- I do not. It's been within the last five --
13 five years or so.

14 Q. When you did your presentation, was the
15 Darryl Turner case, was it referenced at all?

16 A. I don't believe so.

17 Q. But has Ms. Keeton or no member of the defense
18 counsel has provided you with any video or documentation
19 related to the death of Darryl Turner which also
20 occurred in Charlotte?

21 A. No.

22 Q. I'm sorry. My volume wasn't working. Did you
23 say yes?

24 A. No. I said no.

25 Q. Okay. No. Did your report or opinions cover the

1 issue of whether the Charlotte-Mecklenburg Police
2 Department modified or should have modified or augmented
3 its training after the death of Darryl Turner?

4 A. I don't -- I don't believe so. Mr. Everage, I
5 don't -- hadn't thought about the case and -- for
6 sometime until you brought it up here this morning.

7 Q. And the defense counsel hasn't shared that with
8 you as far as any autopsy of Darryl Turner?

9 A. I don't believe that I've ever seen his autopsy
10 report, no.

11 Q. Or the video of Darryl Turner and his interaction
12 with the Charlotte-Mecklenburg police officer?

13 A. If I saw that, it certainly wasn't -- it wasn't
14 contemporaneous with my work in this case, and I don't
15 recall seeing it.

16 Q. And defense counsel hasn't provided you with a
17 media statement police -- released by the Chief of
18 Police regarding the death of Darryl Turner?

19 A. No.

20 Q. Looking at some of the facts related in your
21 report, you've identified Khalilah Brown as
22 Mr. Williams' former girlfriend. Do you recall where
23 you obtained that information or that fact from?

24 A. I do not. I don't. I'm not sure where I learned
25 of her relationship, whether -- and I don't remember

1 where I learned the quality of her relationship with
2 Mr. Williams.

3 Q. Okay. And you haven't reviewed Ms. Browns's --
4 Ms. Brown's deposition?

5 A. You say I have?

6 Q. I'm asking -- I thought you had answered earlier
7 that you had not --

8 A. No.

9 Q. -- reviewed --

10 A. That's correct.

11 Q. -- the deposition?

12 A. That's correct, I have not. I'm sorry. I
13 thought you said that I had reviewed it. I'm not even
14 aware whether her deposition has been taken or not.

15 Q. And, likewise, you're not -- you haven't been
16 provided with the deposition testimony of
17 Destiny Franklin?

18 A. That's correct.

19 Q. In your report it states that Williams
20 immediately picked up a bag and turned away from
21 Officer Forbes and walked away. Where did you get that
22 information from factually that he picked up -- that
23 La-Reko Williams picked up a bag?

24 A. I don't recall writing that, and I don't recall
25 where I obtained that information if, in fact, I wrote

1 that.

2 Q. Are you aware of the fact that Officer Forbes
3 testified in his deposition that the presence of a bag
4 was not a factor he considered in using force?

5 A. I don't recall that.

6 Q. Do you state anyplace this in quotation marks
7 looking at page four of your report (as read):
8 "Williams was acting, quote, 'very aggressive,' quote,
9 towards Officer Forbes."

10 The quotations, are you quoting a particular
11 source, or are you using the quotations to emphasize
12 merely?

13 A. It would not be my typical fashion to use
14 quotation marks as emphatic indicators. Um, I don't
15 recall whether I read that -- that description somewhere
16 or not.

17 Q. Looking again at the facts on page four, I'll
18 read part of this sentence (as read): "As he again
19 grasped Williams' left hand, Officer Forbes told
20 Williams to put his hands behind his back."

21 Are you contending that that statement occurred
22 prior to any Taser application that Officer Forbes told
23 Williams to put his hands behind his back?

24 A. That is my understanding.

25 Q. Okay. And where do you gain that understanding

1 from?

2 A. That -- I don't recall the specific source, but,
3 again, as you've pointed out, I did have access to
4 Officer Forbes' deposition, to the various police
5 reports, as well.

6 Q. Did you ever talk with Officer Forbes personally?

7 A. I did not.

8 Q. Or by phone?

9 A. No, sir.

10 Q. By e-mail?

11 A. Uh, no, I did not. I don't -- let me just review
12 page two, but I don't believe I've ever spoken or
13 communicated directly with Officer Forbes. No, I don't
14 think I have.

15 Q. Do you know if the audio recording by
16 Officer Forbes indicates that Forbes advised
17 La-Reko Williams to put his hands behind his back before
18 Forbes activated the first deployment of the Taser?

19 A. I don't recall whether I heard that or not, sir.

20 Q. Again, on page five it reads (as read):

21 "Officer Forbes drew his Taser X26 and told Williams to
22 put his hands behind his back warning Williams that he
23 would fire the Taser."

24 Is your -- is it -- are you factually contending
25 that Forbes advised Williams to place his hands behind

1 his back before the first Taser application?

2 A. That is my understanding.

3 Q. If the testimony from Mr. Forbes and the audio
4 from Mr. Forbes did not evidence the fact that he gave
5 the command to place his hands behind his back prior to
6 implementing the first Taser strike, would your opinion
7 change in any way?

8 A. It would not.

9 Q. Williams -- he alleged that Williams clinched his
10 fists, and then you state (as read): "Comma, not
11 complying with the order to put his hands in a position
12 for handcuffing and control."

13 Where did you obtain the fact, or what's your
14 basis for saying, that Williams clinched his fists?

15 A. Uh, the documents that are listed on pages one
16 and two of my report.

17 Q. And do you consider it a material fact that
18 Williams failed to put his hands in a position for
19 handcuffing and control prior to the first Taser
20 application?

21 A. It's certainly something that I would consider.
22 I'm not -- insofar as whether it's material or not as a
23 matter of law, I don't know that I'm prepared to say
24 that.

25 Q. But it's something that you considered?

1 A. It -- it is.

2 Q. And do you contend La-Reko Williams, prior to
3 being tasered, should have put his hands in a position
4 for handcuffing and control?

5 A. I contend that the optimal response for
6 Mr. Williams would have been to, first off, not commit
7 any crime and not commit an assault and not engage in
8 behavior that necessitated involvement of the police,
9 but by the time Officer Forbes showed up, optimally
10 Mr. Williams should have complied with Officer Forbes'
11 directions.

12 Q. My question was not answered so let me re-ask it
13 again. Do you contend that it is a significant fact
14 that Williams did not put his hands in a position for
15 handcuffing and control prior to being tasered?

16 A. Certainly not as significant as other -- the
17 other things that I just mentioned to you.

18 Q. Do you know what specific command was given by
19 Officer Forbes as regarding placing his hands in a
20 handcuffing position?

21 A. I don't recall. And, Mr. Everage, I would note
22 that we've been going a little more than an hour so when
23 you're at a point that you can take a break. I'm not
24 tracking your water consumption, but I am mine so I --
25 whenever it's comfortable for you.

1 MR. EVERAGE: We'll take a break for five
2 minutes. You want to just agree to come back on the
3 record at 1:10?

4 THE WITNESS: Sure. Yeah, your time.

5 MR. EVERAGE: Not 1:10, but it would be
6 11:10 for you, right?

7 THE WITNESS: Yes.

8 THE VIDEOGRAPHER: Going off record. The
9 time is 11:03.

10 (Whereupon a recess was taken.)

11 THE VIDEOGRAPHER: Okay. We're back on
12 record. The time is 11:17.

13 BY MR. EVERAGE:

14 Q. Um, on page five of your report, this is the
15 summation of the facts, you state that after
16 La-Reko Williams was initially failed -- initially
17 struck with a Taser he fell to the ground, correct?

18 A. I'm -- yes. I don't see where you're reading,
19 but that's -- that's correct.

20 Q. Okay. And do you state a couple times in your
21 report that while on the ground La-Reko Williams sat up
22 and tried to stand? Is that your understanding of the
23 facts?

24 A. Yes.

25 Q. What evidence do you rely on to conclude the fact

1 that La-Reko Williams was trying to stand?

2 A. The materials and statements that I reviewed that
3 are listed on page two of my report.

4 Q. Do you know if any of the witnesses testified as
5 to the position of La-Reko's feet while he was on the
6 ground?

7 A. I don't recall.

8 Q. Do you know if any of the witnesses testified to
9 the position of La-Reko's legs while on the ground?

10 A. No. I don't recall.

11 Q. Do you recall anything other than the fact that
12 Officer Forbes alleged that La-Reko Williams was
13 attempting to stand?

14 A. I don't recall whether any other witness made
15 that statement or not, sir.

16 Q. Do you know or recall what specific description
17 Officer Forbes provided in explaining his assessment
18 that La-Reko Williams was attempting to stand?

19 A. I do not.

20 Q. If Officer Forbes testified that
21 La-Reko Williams, while on the ground, his legs were
22 flat and extended out from him, would you consider that
23 a imminent threat?

24 A. Well, certainly someone who is on the ground with
25 flat, extended legs, they could certainly be a

1 significant imminent threat.

2 Q. In what way?

3 A. Well, I -- you noticed that I hesitated for just
4 a minute, and it's because it just came to mind a
5 situation in which an officer approached someone in that
6 position who very quickly, without warning and with a
7 great deal of force, kicked the officer delivering a
8 crippling blow. That's one example. That's what came
9 to mind when you asked that question. I don't know why.
10 It just did.

11 Q. Did Officer Forbes indicate in any way that
12 La-Reko Williams attempted to kick him?

13 A. I don't believe so.

14 Q. Did Officer Forbes indicate in any of his
15 testimony or statements that La-Reko Williams punched
16 him?

17 A. I don't recall that.

18 Q. Did -- uh, did -- are you aware of any testimony
19 or statements from any witnesses, including Mr. Forbes,
20 that La-Reko Williams was in the -- was actually
21 elevating himself or raising his butt off the ground
22 when the strike was delivered -- when the second Taser
23 application was delivered?

24 A. I don't recall a statement to that effect.

25 Q. Have you reviewed the deposition of Dr. Gullagu

1 of the Medical Examiner's Office?

2 A. Of who? I'm sorry.

3 Q. There is a Dr. Gullagu, who is a physician in the
4 Mecklenburg County Medical Examiner's Office. Have you
5 reviewed his deposition?

6 A. I have not. And for the benefit of our very able
7 court reporter, perhaps you could spell that name
8 because it's not one that's familiar to me.

9 Q. I will spell it into the record. I think it's
10 G-u-l-l-a-g-u, if I'm not mistaken.

11 A. Thank you.

12 Q. When Officer Forbes arrived at the scene, did he
13 see La-Reko Williams strike the female,
14 Destiny Franklin?

15 A. After he arrived or as he's driving up?

16 Q. At any point on the scene did Officer Forbes
17 physically observe La-Reko Williams strike
18 Destiny Franklin?

19 A. I don't recall at what point he -- he's out of
20 the car and on the scene.

21 Q. At any point did Officer Forbes observe either
22 Ms. Franklin or La-Reko Williams on the ground?

23 A. I -- I --

24 Q. Let me rephrase that. Let me rephrase that
25 before you answer it. At any point in time before

1 Officer Forbes administered his Taser, did he observe
2 La-Reko Williams or Destiny Franklin on the ground?

3 A. I don't believe so, but I'd have to go back and
4 look at the reports. I don't recall that.

5 Q. At any point in time did Officer Forbes observe
6 La-Reko Williams bashing the head of Destiny Franklin
7 into the ground?

8 A. Into the ground or the phone pole? I don't
9 recall that, sir.

10 Q. Okay. Did -- at any point in time did
11 Officer Forbes observe La-Reko Williams push
12 Destiny Franklin into a -- into a pole?

13 A. I don't recall whether Officer Forbes received
14 that information from a third party or from -- whether
15 that's something he saw or whether he received that
16 information from Ms. Franklin.

17 Q. And do you agree that as Mr. Forbes -- as
18 Officer Forbes approached, La-Reko Williams and Franklin
19 separated from each other?

20 A. I believe that to be the case, yes.

21 Q. And on page eight of the report, Section B-1, you
22 state -- and I'll just read a sentence (as read): "A
23 reasonable, well-trained officer would have recognized
24 that an alternative force option was appropriate."

25 Can you provide some examples of alternative

1 force options that would have been appropriate?

2 A. Well, an Electronic Control Device would
3 certainly be one of them.

4 Q. Any other alternatives?

5 A. Well, I don't know what other alternative options
6 were available to Officer Forbes at that moment in time,
7 but certainly there were other -- other tools that could
8 have been considered, such as there could have been
9 consideration of an oleo resin capsicum spray, some
10 other chemical tool, some form of an impact tool.

11 Q. And with an impact tool, are you referring to a
12 baton?

13 A. Well, either a -- yes. Either a baton or a
14 collapsible baton or a baton-like tool.

15 Q. And at this point in time Forbes had used the
16 Empty-Hand technique, correct?

17 A. He had attempted to control Williams by using
18 Empty-Hand techniques, yes.

19 Q. And after the unsuccessful attempt of the
20 Empty-Hand technique, was there any evidence that
21 Williams charged Officer Forbes?

22 A. I don't believe so.

23 Q. Was there any evidence that Williams -- that
24 Williams threw a punch at Officer Forbes?

25 A. No. I don't recall that.

1 Q. Is there any evidence that at that point in time
2 Williams attempted to flee?

3 A. Well, Mr. Williams clearly was not obeying
4 commands to stop and speak with Officer Forbes. He
5 wasn't running.

6 Q. So he was speaking with Officer Forbes, correct?

7 A. He was speaking, yes.

8 Q. Okay. And he wasn't required to give a statement
9 to Officer Forbes if he didn't want to talk to him, was
10 he?

11 A. Well, I guess that goes back to your questions
12 about whether you want me to opine as a lawyer and offer
13 an opinion of law, but, generally, no.

14 Q. And at this point in time Officer Forbes did not
15 advise La-Reko Williams that he was under arrest. Would
16 you agree with that statement?

17 A. I believe that's accurate.

18 Q. And on page -- also, on I guess it's Section B-2,
19 it says (as read): "Use of an Electronic Control
20 Device, such as the Advanced TASER X26 device, that was
21 used by Officer Forbes is often indicated in cases of a
22 noncompliant subject demonstrates a willingness to solve
23 others."

24 Do you contend that the Taser X26 is a viable
25 option to compel compliance?

1 A. To compel compliance with what?

2 Q. With officer commands.

3 A. Well, there's a number of factors that enter into
4 whether a person is going to comply with officer
5 commands or not, but, certainly some people may choose
6 to comply once an Electronic Control Device is applied.

7 Q. Do you know if pursuant to Charlotte-Mecklenburg
8 Police Department policies whether it is allowed to use
9 a Taser solely to require compliance by a noncompliant
10 subject?

11 A. Well, you don't -- you haven't provided the
12 policies here for me today so I can't review or refer to
13 a specific policy, but my recollection would be that
14 that's not consistent with Charlotte-Mecklenburg Police
15 Department policy.

16 Q. So the officer has to be placed in more than a
17 situation of a subject that is merely noncompliant in
18 order to lawfully use his Taser pursuant to extending
19 Charlotte policy?

20 A. Are you asking if that's my understanding of the
21 policy?

22 Q. Yes.

23 A. It sounds like you're reading from a document
24 that I don't have, but that -- that sounds generally
25 consistent.

1 Q. In Section B-3 of your report, and I'm just going
2 to paraphrase, you contend that the Taser relies on
3 causing loss of neuromuscular control and the subject's
4 ability to perform coordinated actions. Is that how you
5 contend the Taser works?

6 A. That's an accurate statement of something I've
7 said before, and I think I wrote that here.

8 Q. And do you also agree that the electric -- the
9 electric current from a Taser causes a person's muscles
10 to tense up and become rigid?

11 A. Well, the -- that's certainly one -- that's
12 certainly one possible effect.

13 Q. Is another possible effect that the subject loses
14 temporary control of certain muscle functions that are
15 affected by the Taser?

16 A. Assuming that a proper circuit is achieved, it is
17 typically the outcome that a person loses volitional
18 neuromuscular control.

19 Q. Volitional means they have the ability to control
20 their muscle functions, correct?

21 A. Yes.

22 Q. Looking at Section B-4 on page 10 of your report.
23 You mention that police officers are taught, and you
24 list several things regarding the general safety of
25 Tasers, and one of the factors that you listed is the

1 deployment history in numerous public safety agencies.

2 Do you agree that that is one of your factors of
3 consideration as far as Taser training?

4 A. I agree that Taser training generally includes a
5 discussion of the deployment history of the use of the
6 Taser ECD.

7 Q. And do you think that the deployment history of
8 Tasers is something that should be discussed when
9 considering the general safety of Taser usage by
10 officers?

11 A. Well, I don't know that I am prepared to opine on
12 whether it should be or not. That's something I really
13 haven't given a lot of consideration to. I can just
14 tell you that's typically something that is included and
15 has been for many, many years in Taser end user courses
16 as long -- as well as end user courses for other
17 Electronic Control Devices.

18 Q. Do you agree that it would be prudent for a
19 Police Department to document its history of Taser
20 deployments in relation to injuries and risk to
21 subjects?

22 A. Well, I think that's certainly something that an
23 agency's risk management folks might want to take a look
24 at.

25 Q. And you stated earlier that you weren't provided

1 by defense counsel any of the documentation related to
2 the Taser death of Darryl Turner that also occurred in
3 Charlotte, correct?

4 A. I don't believe that defense counsel gave me
5 anything connected with the death of Mr. Turner.

6 Q. And you document in your report that
7 Officer Forbes received training from the
8 City of Charlotte for large Taser usage, correct?

9 A. Correct.

10 Q. And reading from page 10 extending to page 11,
11 your report concludes (as read): "However, officers are
12 also taught that there has never been a death that has
13 been scientifically demonstrated to have been caused by
14 the application of the Taser device."

15 Is that something that's in Tasers training?

16 A. I'd have to go -- to answer that question, I'd
17 have to take a look at their current -- current training
18 materials, and I don't have that here today with me.

19 Q. That statement that's in your report, what is
20 your basis of -- for a reference point for making that
21 conclusion?

22 A. I've been in a number of training seminars and a
23 number of sessions where that statement has been made,
24 and I'm familiar with, as we mentioned before, many,
25 many published studies by medical professionals and

1 professionals in the law enforcement training world that
2 have taught that.

3 Q. Do you -- but you're not a medical doctor?

4 A. I am not.

5 Q. And you're not a pathologist?

6 A. No.

7 Q. And do you contend that Charlotte police officers
8 are being taught that there's never been a death
9 scientifically demonstrated to have been caused by the
10 application of a Taser?

11 A. I don't know whether the officers are told --
12 given that particular statement or not, sir.

13 Q. Do you know whether the autopsy performed by the
14 Mecklenburg Medical Examiner's Office in Charlotte,
15 North Carolina of Darryl Turner indicated that his death
16 was related to a Taser use?

17 A. I -- I don't know whether there was some
18 relational discussion or not.

19 Q. And do you know whether the Chief of Police put
20 out a media statement stating that the death of
21 Darryl Turner was caused by the use of an ECD?

22 A. I do not know that that statement was made.

23 Q. If a local Medical Examiner and the Charlotte
24 Police Department acknowledged to the media that there
25 was a relation between a Taser application and the death

1 of Darryl Turner, would it be prudent for the Charlotte
2 Police Department to communicate it to its officers in
3 its training?

4 A. Well, first, I don't know that that statement was
5 made and would be a little bit surprised if it was
6 because I suspect that the Medical Examiner would have a
7 fairly good understanding of the concept of causation
8 and would certainly understand that coincidence and
9 proximity are very distinct concepts from causation.

10 So I don't know that the premise that you state
11 in your hypothetical is accurate or not, and, if it were
12 accurate, I also don't know that there's the
13 extrapolation that can fairly be drawn there. So I
14 don't know that -- I don't know that your hypothesis is
15 undergirded by fact.

16 Q. Well, I'm not asking you to undergird my
17 hypothesis. What I'm asking you to do is examine these
18 facts hypothetically if the Chief of Police stated in a
19 media disclosure that the death of Darryl Turner was
20 caused by a Taser and the same -- the Medical Examiner
21 investigating the same death indicated that
22 Mr. Darryl Turner's death was related to ECD usage,
23 should the Charlotte-Mecklenburg Police Department
24 communicate that to his officers in training?

25 A. Well, there's so many -- there's just so many

1 underlying factors in your hypothetical that I believe
2 to be inaccurate and to belie the facts that I'm just
3 not prepared to answer that hypothetical, and I'm not
4 going to do so.

5 Q. So you don't believe that the Charlotte Police
6 Department indicated that one of the causes of
7 Darryl Turner's death was ECD usage?

8 A. Again, I don't -- I don't know that to be the
9 case, that that statement's ever been made.

10 Q. Have you read -- you mentioned that you read a
11 case study from Dr. Zipes; is that correct?

12 A. That is correct. It's actually not -- case
13 series is the term I use. You used the term "case
14 study." I never acknowledged that term.

15 Q. Okay. Do you know if the case series was
16 entitled "Sudden Cardiac Arrest and Death Associated
17 With Application of Shocks From a Taser Electronic
18 Control Device"?

19 A. That seems generally familiar as the title.

20 Q. Okay. And was it -- do you recall who it was
21 published in circulation, which is the Journal of -- for
22 the American Heart Association?

23 A. I know that at least one or perhaps two of the
24 corrections and responses were published there. I think
25 that the original case series may have been published

1 there or not, but I -- that's not where I saw it.

2 Q. Are you familiar with the wrongful death verdict
3 by the failure of Darryl Turner against Taser
4 International?

5 A. I am not.

6 Q. If the Police Department had information that a
7 death can be caused by the use of a Taser, would that
8 change or alter your opinion as to how the officers are
9 checked or trained?

10 A. If a Police Department had reliable scientific
11 evidence that had been peer reviewed that had been
12 subjected to the rigors of what most scientists accept
13 as a study and had been then juried by competent peers
14 and the information was that it was a situation capable
15 and likely to be repeated, I think that's certainly
16 something that should be discussed for inclusional
17 training. Absent those factors, then that's a whole
18 other hypothetical.

19 Q. So if a jury made a determination that a Taser
20 usage caused the death of Darryl Turner, would that
21 information cause you to change your opinion as to how
22 the Charlotte -- the City of Charlotte trains its
23 officers on the use of Tasers?

24 A. I'd certainly want to take a look at what type of
25 jury it was, whether it was a civil jury, a coroner's

1 jury, what type of proceeding it was, what information
2 was presented, and just a whole host of factors to
3 determine whether, as you represent, a jury's finding
4 was appropriate for inclusion in training to police
5 officers. So, based on what you've given me, I can't
6 answer beyond that.

7 Q. And you weren't provided any documentation
8 related to the case of Fontenot versus Taser
9 International which is the family of Darryl Turner?

10 MS. KEETON: Objection. Asked and answered
11 repeatedly.

12 THE WITNESS: I'm not quite sure how to
13 explain that to you, sir. I'll do it one more time as
14 best as I can, and help me understand why I'm not
15 communicating to you. I don't believe I ever discussed
16 it with defense counsel. Defense counsel hasn't
17 provided me videos, documents.

18 I've never -- the name Fontenot is not
19 something that I've heard from defense counsel. That's
20 something you've introduced here. I -- I've tried to be
21 clear on that. The answer is no.

22 BY MR. EVERAGE:

23 Q. On page 12, the first sentence, Section B-6 of
24 your report you said or you wrote (as read):

25 "La-Reko Williams had marks, abrasions that may have

1 resulted from his fall incident to the first Taser
2 energy cycle."

3 What part of your -- of La-Reko Williams' body
4 are you referencing? Do you recall?

5 A. I don't recall, sir. I did see photographs, but
6 I don't recall, as I sit here today, where the marks and
7 abrasions were.

8 Q. Officer Forbes on page 13, section -- the first
9 sentence of Section B-8, you state or you wrote
10 (as read): "Officer Forbes was required to make a
11 split-second judgment about how best to detain and
12 control Williams."

13 Do you know how long the confrontation between
14 Officer Forbes and Officer Greene -- excuse me,
15 Officer Forbes and Mr. Williams was?

16 A. I don't recall and I don't have -- I don't have
17 the documents here before me to answer that for you.

18 Q. Were you aware of the fact that a witness
19 testified that he observed a laser dot on La-Reko's
20 chest for several seconds up to a half a minute -- a
21 half a minute before Mr. Williams fell?

22 A. I don't recall that testimony.

23 Q. And you've never reviewed the testimony -- if
24 that testimony was given in a deposition of
25 Omari Greene, you haven't reviewed it?

1 A. I have not seen Mr. Greene's deposition.

2 Q. And as to the evidence in this case as to -- let
3 me rephrase that. Is the evidence -- the evidence and
4 testimony that you reviewed indicate that Mr. Williams
5 was standing still and was not in motion when the
6 initial Taser shot was given?

7 A. I don't recall from my review of the documents
8 whether there was testimony that he was motionless or
9 not, sir.

10 Q. There's no testimony or statements given by
11 Officer Forbes or any of the witnesses that Mr. Williams
12 reached for or tried to obtain Officer Forbes's weapon;
13 is that correct?

14 A. I believe that's correct.

15 Q. I'll now read a couple of sentences from pages 14
16 and 15 that state (as read): "Any reasonable officer
17 would have recognized Williams presented a threat of
18 grabbing for Officer Forbes' weapon, almost certain
19 result would have been one or more shooting deaths."

20 What did you mean by "almost certain"?

21 A. When two people fight over a gun, particularly
22 when a suspect and an officer fight over a gun, it
23 becomes very frequently a fight to the death. In fact,
24 just happened this past week, an officer grappled with
25 someone for his weapon, and the man was able to secure

1 the officer's weapon and then shoot and kill the police
2 officer. That's the common result.

3 Q. Had there been some hand contact between
4 Officer Forbes and La-Reko Williams previously, correct?

5 A. I'm not -- I'm not sure I understand your
6 question, sir.

7 Q. Okay. Did Officer Forbes attempt to detain
8 La-Reko Williams using his hands at any point during
9 their encounter?

10 A. Yes. I'm sorry. I thought perhaps you were
11 referring to a prior time, a separate time. Yes, you're
12 correct.

13 Q. And during that event in which -- during that
14 event that La-Reko Williams tried to obtain
15 Officer Forbes's weapon?

16 A. There's no evidence of that.

17 Q. In paragraph B-10 you state (as read): "Williams
18 continued to pose a threat to Officer Forbes and
19 Franklin as long as he refused to comply with orders to
20 assume a position to facilitate handcuffing as long as
21 he tried to stand up."

22 Now, there -- in that sentence there, there's --
23 there are two actions that you refer to, refusing to
24 comply to assume a position to facilitate handcuffing,
25 and the second thing that you refer to is trying to

1 stand up.

2 Is it your opinion that he was a threat if he was
3 trying to do both of these things, or is it your opinion
4 that he was a threat if he did just one of those
5 actions?

6 A. In the disjunctive, either one.

7 Q. So, if he was laying on the ground, he would
8 still pose a threat to injure someone or assault
9 someone?

10 A. He could be.

11 Q. Do you have any reference as to how far away
12 La-Reko Williams was from Officer Forbes when you made
13 that conclusion that he was a threat while on the
14 ground?

15 A. I don't recall.

16 Q. Do you have any reference point in making that
17 conclusion as far as how far La-Reko Williams was from
18 Destiny Franklin while he was on the ground?

19 A. No. I don't recall.

20 Q. Would you agree that while La-Reko Williams was
21 on the ground before he could be a threat to
22 Officer Forbes he would either have to move towards
23 Officer Forbes, stand up in some manner, or
24 Officer Forbes move towards him?

25 A. Absolutely not.

1 Q. Okay. Well, can you explain why he would
2 continue to pose a threat if he wasn't moving towards
3 the officer, the officer wasn't moving towards him, or
4 he wasn't standing?

5 A. Sure. You -- and understanding that what you're
6 asking here is -- is for me to give you an entire range
7 of behaviors. What comes to mind most is a very
8 shocking video that I watched on a news report just last
9 night where a man who was seated, appeared to be seated
10 calmly, excuse me, with his hands not immediately
11 appearing to be in any threatening position, he'd
12 actually been arrested and he very suddenly somehow,
13 despite being in handcuffs, took a handgun out, shot out
14 a window of a police car, shot an officer, and the
15 officers returned fire and killed the man.

16 Prior -- and as you watch the video, immediately
17 prior to the man drawing and firing the gun, there was
18 no indication whatsoever that the man had had a gun and,
19 in fact, one -- I don't know, but one could assume that
20 he'd been searched. In this case, Williams had not been
21 handcuffed. He had not been searched. So there's just
22 one example, and there are certainly others.

23 Q. Okay. And there was no evidence that Williams
24 ever had a weapon. Do you agree with that?

25 A. I certainly agree that the hindsight that we now

1 have in 20/20 vision shows that there was not a weapon.
2 That certainly was not known to Officer Forbes or
3 Officer Franklin.

4 Q. Okay. Did Officer Forbes ever report that he saw
5 a weapon?

6 A. Officer Forbes never reported after the fact that
7 he saw a weapon.

8 Q. Okay. Did Officer Forbes ever report that he
9 thought that he saw something that looked like a weapon?

10 A. Again, in Officer Forbes' ability to report the
11 circumstances after they unfolded and after they
12 concluded, he did not report that.

13 Q. Do you know if -- if Officer Forbes testified
14 that immediately before implementing the second Taser
15 strike he saw that La-Reko Williams's hands were on the
16 ground, would that -- would that observation be in any
17 way -- constitute a threat to the officer?

18 A. Assuming that his hands were motionless, and he
19 was compliant, and his hands were on the ground in full
20 view, the answer would be no.

21 Q. But even in that example that you gave where the
22 person was in a seated position and then stood up or
23 shot someone, there would have to be some motion, that
24 being said, to present a threat, correct?

25 A. Well, one would assume so. That was one of the

1 shocking things about the video. It really is quite an
2 amazing thing because you don't see the gun. You
3 actually don't see the gun, and you don't even realize
4 there has been a gun until you see that the window has
5 been blown out because he's able to fire the gun right
6 from -- right from the waist, and it's just not real
7 evident.

8 So, yeah, there would have to be some motion,
9 whether it would be a perceptible motion and one that's
10 within the field of vision or not, I don't know.

11 Q. Are you familiar with Charlotte-Mecklenburg's
12 Police Department policy and definition of the defensive
13 resistance?

14 A. I believe that I've seen that term in their
15 policies before. I don't have their policies here
16 before me.

17 Q. Okay. I'll read it to you. It's from policy
18 600-20. It says (as read): "Defensive resistance is
19 subjects engaging in the defensive resistance take
20 action to prevent being taken into custody, the goal of
21 this action is to escape and not to injure the officer.
22 This action may include twisting, pulling, holding on
23 affixed objects, or running away."

24 Do you agree that that is consistent with other
25 law enforcement policies or definitions that you're

1 familiar with in your training?

2 A. That's -- that's consistent with other
3 definitions that I've seen, yes.

4 Q. Do you know whether law enforcement policies
5 generally prohibit or allow an officer to deploy the use
6 of a Taser against an individual that is only engaging
7 in defensive resistance?

8 A. Generally, a Taser would not be indicated for a
9 person engaging only in defensive resistance and nothing
10 more where there is some other means of bringing the
11 person into compliance, but I'm aware of policies that
12 certainly would allow for deployment of an Electronic
13 Control Device in circumstances that fit the definition
14 that you have just read to me or substantially similar
15 definitions.

16 Q. Do you know whether the Charlotte-Mecklenburg
17 Police Department's policies and procedures allow for
18 the use of a Taser to get at someone that's only
19 displaying defensive resistance?

20 A. Well, I'd be happy to look at the policy if
21 you've got it here that I can look at, sir, but I don't
22 have a clear recollection of the policy that I reviewed
23 sometime ago.

24 Q. Would you agree that most policies in law
25 enforcement agencies would not allow for the usage of a

1 Taser in instances where only defensive resistance is
2 being offered?

3 A. I would agree that most policies that discuss the
4 issue would contraindicate the use of an Electronic
5 Control Device if there is merely resistance that's not
6 assaultive, not threatening, and there is some
7 alternative means of controlling or taking the person
8 into custody.

9 Q. You discussed in Section C of your report that
10 Officer Forbes is trained in de-escalation techniques.
11 Can you explain what de-escalation techniques are?

12 A. Well, generally, de-escalation techniques are
13 communication techniques. They are interpersonal
14 communications skills that are taught to help persons
15 understand how to reduce the tension, reduce the
16 aggression, perhaps even reduce the verbal resistance
17 offered by combatants or assaultive persons or persons
18 who were involved in some kind of a confrontation,
19 altercation dispute, and so forth.

20 Q. Is a technique of de-escalation, would one of the
21 techniques be explaining or trying to answer questions
22 if a suspect is asking questions?

23 A. Well, broadly speaking, that certainly would be
24 within the scope of what could be possible, assuming the
25 circumstance was appropriate for answering questions and

1 engaging in a dialogue.

2 Q. Would another technique of de-escalation involve
3 allowing a suspect additional time for additional or
4 subsequent forces used?

5 A. It could be.

6 Q. Would another technique of de-escalation involve
7 allowing more time for additional forces used to allow
8 adequate backup or additional officers to arrive?

9 A. In certain circumstances that could be within the
10 realm of possibility, as well.

11 Q. Now, I've looked at some of your qualifications,
12 and I just want to ask you a few brief questions. I
13 want to start with your employment. Where are you
14 employed, Mr. Wall- -- am I saying your name correctly?
15 Wal-EN-tine?

16 A. That's close enough, Wallentine, yes. Until
17 yesterday I was employed at the office of the Utah
18 Attorney General.

19 Q. Okay. So you're no longer employed there?

20 A. I am not.

21 Q. Okay. Was the separation voluntary or
22 involuntary?

23 A. It was voluntary. I retired after 32 years of
24 service, which was 12 years longer than I was required
25 to, to obtain a pension.

1 Q. Well, congratulations.

2 A. I've got to tell you this morning I feel like a
3 retired guy so thank you.

4 Q. Um, you mentioned that you are a consultant for
5 Utah Risk Management Mutual Associates; is that correct?

6 A. It's Utah Risk Management Mutual Association,
7 yes, sir.

8 Q. Association. And is that an insurance company --

9 A. It's --

10 Q. -- or association?

11 A. It's a risk management pool and so it's a group
12 of public entities that come together to secure
13 insurance coverage at -- you know, obviously, try and
14 get together so they can get a reduced rate or share
15 costs and risk.

16 Q. And they insure municipalities and law
17 enforcement officers?

18 A. They insure municipalities. They may have some
19 other government entities besides municipalities, but
20 they primarily insure municipalities.

21 Q. And as a consultant --

22 THE REPORTER: Mr. Everage?

23 MR. EVERAGE: Yes.

24 THE REPORTER: The videotape is almost out.
25 We might need to take a break.

1 MR. EVERAGE: Okay. We'll come back at 2:20
2 and 12:20.

3 THE WITNESS: Who uses tape anymore?

4 THE VIDEOGRAPHER: Okay. Going off the
5 record. This is the end of tape number one. The time
6 is 12:16.

7 (Whereupon a recess was taken.)

8 THE VIDEOGRAPHER: Okay. We're back on
9 record. This is the beginning of tape number two. The
10 time is 12:31.

11 BY MR. EVERAGE:

12 Q. We were discussing your employment by Utah Risk
13 Management Mutual Association. Are you paid a salary,
14 or are you paid by the compensation arrangement?

15 A. Actually, sir, I'm not employed, just a
16 consultant, so I'm paid on an hourly basis for my work
17 for them.

18 Q. Okay. And are you hired for specific cases or
19 assignment, or do you have an ongoing retainer or hourly
20 arrangement with them?

21 A. No. I don't have an ongoing retainer for now.
22 Right now, for example, I'm working for them putting
23 together some material for a risk management training
24 conference for city attorneys and police chiefs so it
25 just depends. I might go months and months and not do

1 any work for them at all.

2 Q. Okay. Would it present a conflict of interest
3 for you to provide more services to a person or a family
4 of a deceased that had a potential claim against a law
5 enforcement officer for or some other municipality in
6 Utah?

7 A. I've done that in other states, but I would not
8 do that in Utah.

9 Q. In your listing of cases in which you provided
10 expert testimony, I just want to confirm something. Is
11 it accurate that you have always testified on behalf of
12 defendants with the only exception being that you've
13 testified on behalf of the United States as a plaintiff
14 on a couple of occasions?

15 A. That's not accurate.

16 Q. Okay. Have you ever -- in your listing have you
17 ever provided testimony on behalf of plaintiffs that
18 have been injured by police officers or subjected to
19 some type of excessive force of constitutional
20 violation?

21 A. Yes.

22 Q. Okay. Are any of those cases listed in your
23 report?

24 A. Yes.

25 Q. Can you help point those out for me?

1 A. Yes. The -- only one of those cases is listed in
2 my report, and it wouldn't -- I can see why you would
3 ask me that because it wouldn't be readily apparent to
4 you, but in the case of Ibarra versus City of
5 Watsonville, I testified that Officer Ibarra in that
6 case used excessive force, unconstitutional excessive
7 force, against a young man in the course of arresting
8 that young man.

9 Q. Okay. And what page is that listed on?

10 A. It's on page 26 just about a third of the way
11 down. It's Ibarra with an "I", I-b-a-r-r-a, versus City
12 of Watsonville.

13 Q. Okay. And you would have provided testimony on
14 behalf of the city in that case?

15 A. I don't -- I don't recall whether it was the city
16 or -- it was some government entity that hired me to
17 testify contrary to the interest of the police officer.

18 Q. Okay. Was Ibarra the police officer in the
19 controversy?

20 A. He was.

21 Q. And that wasn't an action for a violation of
22 civil rights or excessive force on him, was it?

23 A. I believe there was one, but I didn't get to the
24 point that I testified in that. I testified before the
25 civil service hearing panel when he was contesting his

1 termination that was based, in part, on a finding that
2 he had exercised unconstitutionally excessive force
3 against an individual arrested by him.

4 Q. And any personal injury action or 1983 claim or
5 action for excessive force, have you ever testified in
6 support of a plaintiff or person that alleged that they
7 were injured or violated by a police action?

8 A. Yes, I have.

9 Q. Are any of those cases listed on your report?

10 A. No.

11 Q. The list on your report seems comprehensive that
12 is, just by my estimation, a page and a half
13 approximately, and that includes cases within the last
14 four years, correct?

15 A. It included cases within the four years prior to
16 December of 2013 when I provided this report.

17 Q. And currently are you representing any
18 individuals or families of individuals that have been
19 injured or had their lives violated by police officers
20 in any litigation?

21 A. No. No, I am not.

22 Q. And did you -- were you the author of an article
23 regarding Taser "A" points and directives given by Taser
24 regarding rear aim?

25 A. Yes.

1 MR. EVERAGE: I don't have any further
2 questions at this time.

3 MS. KEETON: We're going to have some
4 questions here. Can you all hear us okay?

5 THE WITNESS: I can hear you, yes.

6 EXAMINATION

7 BY MS. KEETON:

8 Q. Okay. Mr. Wallentine, I'm Lori Keeton. We've
9 met before, and I represent Officer Forbes. I just have
10 some follow-up questions for you.

11 First of all, I know we discussed your background
12 briefly. I wanted to ask you if you could, please,
13 explain your background as far as it relates to ECD.

14 A. Well, I have been a police officer since -- well,
15 a police officer since 1982. I worked in corrections
16 for a brief period of time before that and have been
17 generally familiar with Electronic Control Devices since
18 they first started to gain some acceptance.

19 I was exposed to a device called the Air Taser
20 which was one of the early standoff Electronic Control
21 Devices. So, in terms of history, I've -- I guess it
22 would be fair to say that I've grown up in law
23 enforcement being familiar with Electronic Control
24 Devices.

25 I am an instructor, certified instructor, for

1 using and teaching others how to use Electronic Control
2 Devices. I'm trying to remember when, and I don't know
3 if I referenced that in my report, but I've been an
4 instructor for several years in the use of Electronic
5 Control Devices, and I've taught user classes and taught
6 in instructor courses and lectured on the use of
7 Electronic Control Devices in a number of circumstances,
8 and then I think you're both aware I've testified in
9 other cases that have involved, um, Electronic Control
10 Devices.

11 Q. What's required to be certified as an ECD
12 instructor?

13 A. Well, the first step is one must be a certified
14 Electronic Control Device user and then go to a training
15 program. It's a Train-the-Trainer program that consists
16 of pre-study, one receives some homework assignments.
17 There's -- there are reading materials to study and then
18 a test. I don't -- I don't recall the name of the
19 educational institution.

20 It's a college that has -- that offers the
21 course, and then you take a test through the college's
22 testing center. If you pass that pre-education
23 requirement, then you're allowed into a two day
24 Train-the-Trainer course where you learn about the
25 device, how the device operates, the various types of

1 Electronic Control Devices, talk about some of the
2 medical considerations and what happens when the device
3 may fail, and you learn techniques for teaching other
4 students. That certification is valid for I believe
5 it's two years and then at the end of the two years you
6 are required to repeat your training and become
7 recertified.

8 Q. Would it be fair to say that you have taught
9 officers, such as Officer Forbes, how to use the ECD and
10 given them their training?

11 A. Yes. I did not teach Officer Forbes
12 specifically, but the type of class that he sat through
13 on a couple of different occasions and the type of
14 scenarios that he engaged in in his training on a couple
15 of different occasions is similar to training that I had
16 presented to other law enforcement officers, deputy
17 sheriffs, Highway Patrol troopers, municipal police
18 officers on a number of occasions.

19 Q. And now, if you don't mind, can you tell me --
20 there's still a lot of what you did and did not review
21 in this case. Would you mind putting on the record what
22 you reviewed in forming your opinions in this case?

23 A. Yes. And I'm referring to pages one and two of
24 my report. The first thing I looked at is typically my
25 practice is the plaintiffs' complaint and the answers,

1 the responsive pleadings, and then the discovery, that
2 is, interrogatories, responses to interrogatories,
3 sometimes their initial disclosures. I was provided in
4 this case a number of police reports relating to the
5 contact with La-Reko Williams. I reviewed the training
6 records for Officer Forbes, the dispatch records
7 pertaining to this particular incident. I was provided
8 with policies of the Charlotte-Mecklenburg Police
9 Department, not the entire policy manual. I looked at
10 their policies relating to use of force, their policies
11 relating to Electronic Control Device application.

12 In addition to the individual officer training
13 files, I also was given the opportunity and did examine
14 the -- the Police Department's training curriculum and
15 training documents for use of force and Electronic
16 Control Device, the Taser training modules that were
17 presented to Officer Forbes and his training and other
18 officers.

19 I looked at one deposition transcript in this
20 case that was prepared prior to my report. That is the
21 deposition of Officer Michael Forbes. Um, I also looked
22 at the interview transcript with Officer Forbes, the
23 transcript of a second interview with Officer Forbes
24 that was done by the Charlotte-Mecklenburg Internal
25 Affairs of -- I don't know if it's a bureau or division.

1 Then I looked at transcripts that were provided to me
2 for a number of persons, including Destiny Franklin, um,
3 Omari Greene, Khalilah Brown, uh, Eddy Brown,
4 Aaron Abbott. I was -- I looked at the coroner's -- or
5 I believe you call it Medical Examiner's Report in your
6 state, the Medical Examiner's Report, the autopsy
7 findings and autopsy photographs, other photographs
8 related to the incident, video recording from the -- I
9 believe it was a dash camera. I looked at a Data
10 Download Report that was provided to me that allowed me
11 to review the activation history of a particular X26
12 device carried by Officer Forbes. Um, I looked at a
13 report -- I'm sorry, I think there was one other thing.
14 I looked at a report submitted by Mr. David King, and I
15 -- I believe that that's -- I think I've caught it all.

16 Q. And when was your report drafted, if you recall?
17 What is the date of your report?

18 A. I recall when it was drafted. I don't recall the
19 date. I recall when it was drafted because I just got
20 back in the country from China so it was right at the --
21 it was at the first of -- right before Christmas, the
22 first of December, first couple of weeks, and I signed
23 it on December 13th of 2013.

24 Q. Okay. And so it's fair to say it's been a few
25 months since you drafted this report?

1 A. It's been a few months since I drafted the
2 report, and actually most of the documents that I've
3 just listed for you were documents that I examined, and
4 I don't recall the exact time frame, but they would have
5 been before I spent a couple of weeks in China at the
6 end of November, Thanksgiving, early part of December.

7 Q. Is your report drafted based upon your review of
8 the documents you have listed?

9 A. Yes, it was.

10 Q. And there's been talk about you not being given
11 depositions to review. Is it fair to say you were given
12 interviews to review?

13 A. Yes. I was given interviews that were -- were
14 taken much closer in time to the incident of July 20th,
15 2011.

16 Q. And is it actually your preference to review
17 interviews as opposed to depositions?

18 A. Well, I don't think anybody in their right mind
19 likes to read depositions, but I generally prefer to
20 have interviews simply because almost always the
21 interviews are performed when they're closer in time to
22 the event about which the folks are discussing and so
23 typically you get a better recollection.

24 They're typically conducted prior to meetings
25 with attorneys or other discussions that may shape a

1 person's recitation of recall, so, yes, I do prefer,
2 when I can get the interviews and if the interviews are
3 of decent quality, I prefer to see the interviews.

4 Q. Was there any information that you requested that
5 you needed to form your opinions and did not get it?

6 A. No. There was not.

7 Q. And now I know this is pretty basic, but you
8 haven't been asked actually to do this. Can you please
9 state the opinions you have in this case based on your
10 experience and would you give it to us?

11 A. Well, yes.

12 Q. The basis for each, if you can.

13 A. Yes. I can do that. And probably the most
14 sensible thing for me is just to refer you to -- as
15 Mr. Everage pointed out, I did organize my opinions here
16 into some headings, and my first opinion in this case is
17 that when Officer Forbes gave commands to La-Reko Evans
18 -- excuse me, La-Reko Williams, and tried to effect the
19 detention of La-Reko Williams, that was consistent with
20 what a well-trained and a reasonable police officer
21 would do and was consistent with the generally accepted
22 police policies, practices, procedures and training.

23 The basis for that opinion is that this call
24 unfolded as a domestic violence call, and, you know,
25 sadly or it just is a fact of life that police officers,

1 deputy sheriffs are called often in the United States to
2 respond to domestic violence calls; in fact, officers
3 know that some of the most deadly circumstances in which
4 they can walk into are domestic violence situations. In
5 this case, there were separate pieces of information
6 coming in of a domestic assault occurring at a train
7 station. It's a -- and I'm sorry, I've forgotten the
8 name of your system there, but it's a Light Rail System
9 there in the Charlotte-Mecklenburg area.

10 So the police received separate calls for help.
11 The calls were consistent in that there was a domestic
12 assault unfolding. The calls were somewhat remarkable
13 in that off times calls like that are from either
14 anonymous calls or -- callers or from callers who will
15 call, dump a bunch of information and then hang up, and
16 sometimes you'll hear the term, well, I don't want to
17 get involved, leave me out of this.

18 But, in this case, there was detailed information
19 and so as the first ground for my opinion here is that a
20 duty arose for Officer Forbes to respond to a situation
21 that he believed or should have believed a reasonable
22 officer would have believed was a domestic violence
23 situation, and then an officer would know that she or he
24 has a duty to intervene in the domestic violence
25 situation.

1 So the response was appropriate in
2 North Carolina, like many states, perhaps all states,
3 has a statutory obligation bestowed upon law enforcement
4 officers to respond to domestic violence.

5 All right. Another basis for that first primary
6 opinion is that as Officer Forbes arrives at the scene,
7 he's been given information; some of that information is
8 communicated to him as coming directly from the
9 complainant, from Ms. Franklin. He confirms that
10 information with his own observation; as he comes up,
11 what he sees is harmonious with what he'd been told by
12 the dispatcher, and so a reasonable, well-trained police
13 officer, and police practices dictate the first thing
14 you do, you don't have the luxury of time. You've got
15 to step in and separate the parties, prevent further
16 assault, stop the physical -- physicality, break people
17 apart, and then find out what happened.

18 This isn't a situation where you can say nothing
19 to see here, folks, move along. This is a situation
20 where a police officer has a duty to ascertain what has
21 happened, has an affirmative duty in some cases to make
22 an arrest, and has a duty to prepare -- to obtain enough
23 information and prepare a police report.

24 And so Officer Forbes breaks up the
25 confrontation, and he then recognized, as would a

1 reasonable and well-trained police officer, that he had
2 a duty to find out what happened to gather information,
3 and that means stopping, detaining La-Reko Williams as
4 he's wanting to leave the scene. And so, based on that,
5 my opinion is that a reasonable officer would have
6 detained, uh, would have detained Mr. Williams and
7 potentially would even have arrested him for a domestic
8 violence assault.

9 So that's -- that's the first opinion that I've
10 rendered and the basis for that first opinion.

11 Q. So it was reasonable for Officer Forbes to rely
12 upon the 911 calls?

13 A. Well, yes. Police officers don't have the gift
14 of looking down from the heavens above and knowing what
15 the facts are. They've got to rely on information that
16 is relayed to them by the dispatcher, and, in this case,
17 the one thing that was remarkable that, in this case,
18 Officer Forbes -- and he may not have known this. I
19 don't remember whether he did or not. But he's getting
20 information supplied by separate callers. It's not only
21 reasonable. He has to rely on that information. Police
22 officers go places every day of their lives and take
23 action based on third-party information. That's how
24 they do -- that's how they do business.

25 Q. And so the fact that when he arrived he saw them,

1 in his words, tussling, that was just one piece of the
2 puzzle for him; is that correct?

3 A. Well, yes. It's one piece of the puzzle, but
4 it's not only one piece of the puzzle; it's consistent
5 with the other pieces he's been provided by other people
6 relaying through dispatch. So that -- I -- it would not
7 be fair for you to say that's just one piece. It's one
8 piece that's consistent with the other pieces.

9 Q. And you believe that Officer Forbes had the
10 reasonable suspicion to detain Mr. Williams at that
11 point in time?

12 A. I do. A reasonable officer who had been trained
13 on what reasonable suspicion is would recognize that
14 there was reasonable suspicion and, I would even say,
15 probable cause to arrest to investigate the domestic
16 violence that had been reported, and he actually saw a
17 physical altercation -- altercation.

18 Q. And then do you have any other opinions?

19 A. I do. Mr. Williams did not respond to verbal
20 commands and so Officer Forbes then, after attempting
21 verbal commands, used a measure of force to accomplish
22 the detention of Williams, and that that force was
23 consistent with the actions of a reasonable and
24 well-trained police officer. It was consistent with
25 generally accepted police practices, policies and

1 training, and that includes the decision by
2 Officer Forbes to use an Electronic Control Device, the
3 particular device in this case is the Taser X26 device,
4 to accomplish the detention of La-Reko Williams.

5 Q. And you were asked -- and would you have
6 described Mr. Williams' behavior in this case as being
7 passive resistance or defensive resistance?

8 A. Well, now I was asked -- Mr. Everage asked me,
9 and he quoted from a policy, and I'll just note that
10 there's some gradients and disparities across the
11 country, of course, in policies as to what passive
12 resistance is or defensive resistance.

13 But this situation here, the facts here that
14 presented to Officer Forbes were more, amounted to more
15 than just as defined earlier as defensive resistance.
16 There's actually an active confrontation. Williams
17 disobeys commands that are lawful to submit to detention
18 so that Officer Forbes can undertake those
19 responsibilities, as I've just described.

20 He -- he -- and you use the word "tussles." It
21 would be fair to say that he tussles with -- Williams
22 tussles with Officer Forbes. He didn't just try and
23 walk away and not talk. He actually tries to engage in
24 force with Officer Williams -- and, again, I emphasize
25 officer -- or, excuse me, Officer Forbes.

1 Officer Forbes had a duty here, a reasonable officer
2 would have recognized he had a duty to undertake certain
3 actions because of the domestic violence that had been
4 reported. And you -- it would not be fair for me to
5 evaluate the physical interaction between Mr. Williams
6 and Officer Forbes and not understand that there had
7 just been a physical confrontation between Ms. Franklin
8 and Mr. Williams. You've got to -- in fairness, a
9 police officer's going to take all of that into account.

10 Q. So that all plays into the equation of whether or
11 not the force was reasonable?

12 A. Well, it does. I mean, there's kind of an
13 intermediary step there that officer -- not only does
14 Officer Forbes give some verbal commands, you know, some
15 really, really when we talked about de-escalation
16 techniques earlier, he gave some -- you know, some
17 pretty flat, benign, non-confrontational, non-accusatory
18 commands.

19 When Mr. Williams made the choice, when
20 Mr. Williams opted not to comply and not to cooperate,
21 Officer Forbes then tries to use a -- what we call in
22 law enforcement a soft, Empty-Hands techniques,
23 basically just going hands-on to stop Williams.

24 Mr. Williams doesn't -- doesn't just kind of pull
25 away. He actually pushes back against the officer

1 twice. He gets aggressive with Officer Forbes, and
2 that's when Officer Forbes is now at the point of where
3 a reasonable and well-trained officer would consider
4 some other force options, and, of course, that's what
5 Officer Forbes did. He considered other force options.

6 Q. Now, can you talk a little bit about the use of
7 force, and specifically the second deployment, and what
8 factors you consider to show what is reasonable?

9 A. Well, in the second -- the second deployment
10 comes when, again, Mr. Williams is not being compliant.
11 He doesn't -- Officer Forbes doesn't have the ability
12 yet to have someone help take him into custody. I think
13 he had made a -- he'd recognized that there was -- he'd
14 recognized that there was a need for his backup officer
15 to hurry. I think that the term used was, uh, step it
16 up.

17 And once -- once Mr. Williams starts to make any
18 move to get back up and to move away, there are a couple
19 of things that are -- that need to be taken into
20 consideration by Officer Forbes. One is that while the
21 energy cycle is not activated, Mr. Williams had the
22 capacity to break the effectiveness of the Taser X26
23 device.

24 He could pull out the probes. He could -- those
25 wires are thin. They are actually -- and I don't think

1 you can see this on camera, but the wires from the X26
2 are actually thinner than some of the hairs in my
3 mustache. I mean, I've looked at them both under a
4 microscope, and they actually are very thin. They're
5 very easily broken. But a reasonable officer would
6 recognize that until Williams can be controlled, until
7 he can be handcuffed, until he can be searched, let's
8 not gloss over that. That's a very important fact.
9 Mr. Williams has not been searched yet.

10 Officer Forbes has got an obligation to keep him
11 under control, and the best way for him to keep Williams
12 under control when Williams starts to get up again is to
13 give additional verbal commands and to apply a second
14 energy cycle of the Taser device, and that's what he
15 did.

16 Q. Should he have attempted to cuff under power
17 between the first and second deployments?

18 A. Well, he wouldn't -- he should not have attempted
19 to cuff between the first and second deployments. When
20 we talk about this term "cuff under power," we're really
21 talking about the officers touching, laying hands on the
22 subject while the subject is receiving energy delivered
23 by the Taser device, and the point of teaching officers
24 to cuff under power, and I've done this in class, and we
25 teach officers that someone who's receiving an energy

1 cycle, if you run up and touch them you won't be a
2 subject to the energy cycle. In other words, you're not
3 going to be shocked by the Taser. That's what we mean
4 when we talk about cuffing under power.

5 Cuffing under power is something that typically
6 is done with two or more officers. At the point that
7 the second cycle has begun, there aren't two officers at
8 the scene, and so, no, it would not be the best course
9 of action for Officer Forbes to attempt to handcuff
10 under power. The best thing for him to do, one very
11 reasonable option is the option that he chose, that's to
12 maintain standoff distance, to apply a second energy
13 cycle.

14 Officer Franklin was there very shortly and then
15 they're able to use the ability of marginal superiority
16 of numbers to obtain control and get Mr. Williams into
17 handcuffs.

18 Q. And do you have any other opinions?

19 A. Well, I also looked at the training. I looked at
20 the training that was done by the Charlotte-Mecklenburg
21 Police Department. It was -- I did ask for it, and it
22 was provided the full -- what I believe to be -- was
23 represented to me to be the full training curriculum for
24 the Taser X26 device.

25 I also looked at Officer Forbes' training to make

1 sure -- and I actually did. I looked at his tests to
2 make sure that he passed his initial testing in, uh, I
3 think it was 2008. He then did recertification testing
4 in 2009. He passed that test, as well, and then passed
5 -- passed testing in, uh, 2010, and then I think just
6 before this incident in 2011. I reviewed the training
7 curriculum, found the training curriculum to be
8 consistent with the training that is generally used by
9 public safety agencies, law enforcement agencies
10 throughout the United States, found they included
11 scenario based training, found very significantly that
12 it included testing, that officers required to take a
13 test and pass the test, that there was decision making
14 component and found that the Charlotte-Mecklenburg
15 training program was at least as good as, and I actually
16 think it was better than, training that's offered in
17 other police agencies. It really meets best practices
18 for Electronic Control Device training.

19 And I'd have to go back and look at my report,
20 but one thing that was notable was that Officer Forbes
21 had recertified and retrained on the use of this
22 particular Taser device on a number of occasions.

23 Q. And do you have any other opinions that you plan
24 to offer in this case?

25 A. Well, I did. I don't recall whether I was

1 specifically asked to or not, but I did also look at the
2 policies governing the Electronic Control Device and use
3 of force promulgated by the Charlotte-Mecklenburg Police
4 Department. One of the things that is a little bit
5 unique -- it's not a little bit. It's actually quite
6 unique to the Charlotte-Mecklenburg Police Department is
7 that it had undergone a peer review by a well-respected
8 organization, the Police Executive Research Forum, of
9 its Electronic Control Device policies.

10 I've done similar reviews for other agencies and
11 so I'm generally familiar with how that's done, and I
12 found that in my review of the Charlotte-Mecklenburg
13 Police Department policies governing use of force and
14 governing use specifically of the Electronic Control
15 Device, that their policies reflected best practices,
16 that notably their policies had been reviewed on an
17 irregular cycle, that, as I mentioned, somewhat uniquely
18 they had been reviewed by an outside peer reviewed
19 research body, and that the Charlotte-Mecklenburg Police
20 Department had a process in place and a process that
21 happened in this case to have their policies reviewed on
22 a regular basis by legal staff, and I guess to use the
23 vernacular of law enforcement, I would just say that I
24 found that they had very dialed in, very up-to-date
25 policies in these areas.

1 Q. Have you covered all of your opinions?

2 A. That's the extent of what I've been asked to look
3 at thus far. You know, certainly I might have other
4 opinions if I'm asked to look at other issues or
5 presented with other documents or evidence in the case.

6 Q. I just had a few other questions just based upon
7 what you were asked on direct, and these I'm going to
8 jump around a little bit. A lot was asked about the
9 potential for the Drive-Stun marks upon Mr. Williams's
10 body.

11 Let's just assume hypothetically they were
12 Drive-Stun marks. If another officer, other than
13 Officer Forbes, did that to Mr. Williams, would that
14 have any relevance to Officer Forbes use of force? In
15 other words, does it enter into the analysis of whether
16 Officer Forbes acted reasonably in this instance?

17 A. No.

18 Q. Did you seek any evidence to support the idea
19 that Officer Forbes intentionally cut his mike pack off?

20 A. I did not. Those -- those devices, they're as
21 robust as they can be, but they malfunction. I'm very
22 familiar with them, used them in my own career.

23 I have two children that are law enforcement
24 officers, one of them wears one all the time, and we've
25 had discussions about it seems that they encounter

1 static or cut off at the most inopportune time, and they
2 then pick up recording other times when one wishes they
3 did not. I remembered to take my mike off here before I
4 went to the restroom. Cops don't always do that.

5 Q. Now, on the preferred target then, which you all
6 discussed, I just want to be clear, is it prohibited to
7 shoot the ECD in the chest area, as Officer Forbes did
8 in this case?

9 A. No. It's not. I -- Mr. Everage provided an
10 exhibit here today, Exhibit 2 dated May 31, 2011, but
11 this is just -- this exhibit is just the eight page
12 warnings that were in effect on May 31, 2011.

13 What this exhibit doesn't include is something
14 that really should be read with it. I don't have that
15 here today, but Taser also issued a question and answer
16 memorandum to help people understand what this means.

17 And Taser makes it very plain that based on their
18 research, based on experience, based on science, and
19 based on the law, no, it's absolutely not prohibited for
20 targeting that occurs other than the optimal -- optimal
21 target zones, and that happens.

22 Q. And you've been asked a lot of questions about
23 the Darryl Turner case and your knowledge of the
24 Darryl Turner case. If I were to tell you that in that
25 case evidence was that the officer held the ECD device

1 down for approximately 36 seconds, would that case be
2 distinguishable from this case, in your opinion?

3 A. Oh, absolutely. That's -- to quote Cole Porter,
4 that's night and day. 36 seconds versus a five second
5 deployment separated by a break in energization and
6 another five second deployment, that's worlds apart from
7 one continuous 36 second energy cycle, worlds apart.

8 Q. Okay. Okay. And that's all the questions that
9 we have, but I know you had something you wanted to put
10 on the record, Mr. Wallentine, you mentioned about the
11 payments from us?

12 A. I did. Mr. Everage, under the federal rules it
13 typically, and I realize you scheduled this at the last
14 minute, but, you know, clearly under the rules I'm not
15 obligated to be here this morning without payment in
16 advance.

17 I certainly showed up, but just would like to get
18 on the record that I did that. And I'll send you an
19 invoice and then would just appreciate your
20 acknowledgment on the record of that and commitment then
21 to pay that invoice in an expeditious fashion, sir.

22 MR. EVERAGE: We do acknowledge.

23 MS. KEETON: And that's it for us.

24 THE WITNESS: Thank you.

25 MR. EVERAGE: I just have a few follow-up

1 questions.

2 THE WITNESS: Yes, sir.

3 FURTHER EXAMINATION

4 BY MR. EVERAGE:

5 Q. Can you identify any cases in which you provided
6 consultation, testimony, consultation or testimony that
7 involved the use of ECD devices?

8 A. Yes. Let me --

9 Q. What are those cases?

10 A. Let me turn to my report. The first one would be
11 Chief versus West Valley City Police Department.

12 Q. From what page are you referencing?

13 A. Page 25, sir, about halfway down the page.

14 Q. You said Chief versus West Valley?

15 A. West --

16 Q. Okay. Any other cases?

17 A. Uh, yes. The third line up from the bottom of
18 page 25, Alusa versus Salt Lake County Sheriff.

19 Q. Okay.

20 A. Page 26, four lines down -- no, excuse me, six
21 lines down, Cavanaugh versus Woods Cross City. And
22 about halfway down, Cardall versus Thompson. About
23 two-thirds of the way down, Mitchell versus Dow. And
24 that's all from that list.

25 Q. Do any of these cases that you've identified

1 involve the death of anyone?

2 A. Yeah.

3 Q. Can you identify the ones that involve deaths?

4 A. Cardall versus Thompson.

5 Q. Is that the only one?

6 A. Yes. It's the only one that involves a death
7 from a Taser.

8 Q. And --

9 A. Excuse me. The only one --

10 Q. Was that --

11 A. It's the only one that involves a death where a
12 Taser was deployed in the course of other force being
13 used. I think I said death of a --

14 Q. Was there a --

15 A. I'm sorry. Go ahead.

16 Q. Cardell versus Thompson, did that case go to
17 trial?

18 A. It -- is it Thompson? It did not. Oh, it is
19 Thompson.

20 Q. Do you know if it was dismissed or if a
21 settlement was reached?

22 A. I believe that the matter was dismissed, but I
23 believe it was dismissed pursuant to a settlement.

24 Q. And you gave some testimony regarding the use of
25 mike packs. Have you provided any expert opinion as the

1 user of the mike packs or the use of mike packs or how
2 they work or of their reliability, are you?

3 A. Not in this case.

4 Q. Are you aware if the peer review process that you
5 mentioned occurred before or after the death of
6 La-Reko Williams?

7 A. I am not.

8 Q. Are you aware of what information was provided to
9 the police organization that performed the peer review
10 for the City of Charlotte?

11 A. I -- I am not. Off the top of my head, I read
12 the report of the Police Executive Research Foundation,
13 and I believe that there was either an appendix or in
14 the introduction. There was a discussion of the
15 material that had been provided, but I don't recall,
16 Mr. Everage.

17 Q. And you were asked whether evidence that the
18 third application of a Taser in Drive-Stun Mode
19 contributed to your opinion as to whether or not
20 Officer Forbes acted correctly on that day, correct?

21 A. There was a --

22 Q. Is that the question?

23 A. There was a question that generally discussed
24 something like that, yes.

25 Q. Uh, do you agree that the City of Charlotte still

1 has a responsibility to investigate and ensure that all
2 of its officers are using Electronic Control Devices in
3 lawful and appropriate manners?

4 A. And by "all," I'm assuming that you mean all
5 officers that the city has authorized to use those
6 devices and has provided the devices, yes.

7 Q. And you stated that you reviewed some data
8 dumped, downloaded information from Officer Forbes's
9 Taser; is that correct?

10 A. Yes.

11 Q. Were you provided with any similar data from any
12 other police officers that were on the scene that had
13 Tasers?

14 A. No.

15 Q. In your experience as -- in your experience as a
16 law enforcement officer, do you conduct the use -- have
17 you ever conducted use of force investigations or
18 inquiries?

19 A. Yes.

20 Q. All right. In conducting would you agree that
21 the City of Charlotte's policies on the use of force, of
22 investigating uses of force were appropriate?

23 A. Yes.

24 Q. Would it be consistent with law enforcement best
25 practices if there was competent evidence from a Medical

1 Examiner of a Drive-Stun use of force by a -- on a
2 deceased subject that the Police Department would
3 investigate that?

4 A. Well, if there was -- if there was competent
5 evidence that there was actually a touch mode
6 application of a Taser, um, that would be some but a
7 question to be asked.

8 Q. I don't quite understand what you said, a
9 question to be asked. Let me just be a little bit more
10 specific. If the Medical Examiner's Office provides
11 information to the Police Department and to Internal
12 Affairs saying that there's a Drive-Stun Taser injury on
13 a deceased subject, would it be appropriate for the
14 Police Department, which governs the use of force by its
15 officers, to fully investigate that determination made
16 by the Medical Examiner's Office?

17 A. Well, it certainly would be an issue to be
18 explored. The challenge that I hear in your question is
19 that it's a pretty rare day that you would get a coroner
20 or a Medical Examiner or a pathologist concluding that
21 there were marks that resulted from a touch mode
22 application of an Electronic Control Device without kind
23 of the opposite happening of what you're talking about.

24 Typically, the question is raised to the Medical
25 Examiner, here's evidence that an Electronic Control

1 Device was applied, are these marks consistent with what
2 we are telling you happened simply because the marks
3 that may be left, and a touch mode application doesn't
4 always leave marks, but the marks that may be left can
5 vary so widely that they're not -- it's not a
6 self-evident conclusive pattern injury, and there are
7 many, many other vectors of injury that can present a
8 similar injury to a touch mode application of an
9 Electronic Control Device.

10 Q. I don't think you answered my question. I'm
11 going to ask the court reporter to read my question
12 back, please, if she's able to, or he.

13 (Whereupon the requested portion of the record
14 was read.)

15 BY MR. FULTON:

16 Q. The question is would it be appropriate for the
17 Police Department to investigate that history?

18 A. Again, assuming -- assuming the veracity of a
19 pretty farfetched hypothetical that you've given me,
20 yes, that's certainly something that a Police Department
21 should investigate.

22 MR. EVERAGE: I don't have any further
23 questions.

24 MS. KEETON: Nothing further here.

25 THE VIDEOGRAPHER: Okay.

1 MR. EVERAGE: Will you pause for just a
2 second to allow me to review my notes --

3 THE WITNESS: Certainly.

4 MR. EVERAGE: -- please?

5 THE VIDEOGRAPHER: Going off record. The
6 time is 1:27.

7 (Discussion held off the record.)

8 MR. EVERAGE: We've concluded our
9 deposition.

10 THE WITNESS: Well, I'd say it's a pleasure
11 to meet you, but, you know, Mr. Everage, anymore it's
12 interesting how we equate this, you know, video imaging
13 and texting. Young people today, they have lots of
14 substitutes for sociality. I don't find it so, but you
15 have a nice day there. It's 80 degrees. I can at least
16 see sunshine on the snowy trees out here.

17 MR. EVERAGE: For the record, I wanted to go
18 to Utah, but I got outvoted by co-counsel.

19 THE REPORTER: Mr. Everage, do you --

20 MR. EVERAGE: I've never been.

21 THE REPORTER: Mr. Everage, what kind of
22 copy do you need?

23 MR. EVERAGE: Everyone have a nice day.

24 THE WITNESS: Don't hang up.

25 THE REPORTER: Mr. Everage?

1 MR. EVERAGE: Yes.

2 THE REPORTER: What kind of copy would you
3 like?

4 MR. EVERAGE: Yes, ma'am. We want the video
5 synchronized, video synchronized copy and an e-copy, the
6 disk, condensed copy, whatever. We need the e-copy and
7 video synchronized on DVD.

8 MS. KEETON: I would like an e-transcript
9 with a PDF.

10 THE VIDEOGRAPHER: Okay.

11 THE REPORTER: Okay. Thank you.

12 THE WITNESS: I want to read and sign.

13 (Whereupon the video conference deposition
14 was concluded at 1:30 p.m.)
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25

1 STATE OF UTAH)
) ss.
 2 COUNTY OF SALT LAKE)

3 **KENNETH R. WALLENTINE** deposes and says:

4 That he is the witness referred to
 5 in the foregoing deposition; that he has read the same
 6 and knows the contents thereof; that the same are true
 7 of his own knowledge.

8

9

10 **KENNETH R. WALLENTINE**

11

12

13 SUBSCRIBED AND SWORN to before me this _____ day of
 14 _____, 2014.

15

16

17

18 _____
 19 NOTARY PUBLIC
 Residing in _____, Utah.

19

20 My Commission Expires:

21

22

23

24

25

1 STATE OF UTAH)
) ss.
2 COUNTY OF SALT LAKE)
3
4

5 I, DANA MARIE KENNEDY, a Certified Shorthand
Reporter, Registered Professional Reporter, and Notary
6 Public within and for the county of Salt Lake, State of
Utah do hereby certify:

7
8 That the deposition of **KENNETH R. WALLENTINE** was
taken before me pursuant to notice at the time and place
9 therein set forth, at which time the witness was by me
duly sworn to testify the truth;

10
11 That the testimony of the witness and all
objections made and all proceedings had at the time of
12 the examination were recorded stenographically by me and
were thereafter transcribed, and I hereby certify that
13 the foregoing deposition transcript is a full, true, and
correct record of my stenographic notes so taken;

14 I further certify that I am neither counsel for
or related to any party to said action in anywise
15 interested in the outcome thereof.

16
17 IN WITNESS WHEREOF, I have subscribed my name
this 15th day of April 2014.

18
19 _____
DANA MARIE KENNEDY
20 Certified Shorthand Reporter,
Registered Professional Reporter,
21 and Notary Public in and for the
County of Salt Lake, State of Utah.

22 My Commission Expires:
23 August 2, 2014
24
25